

Our Ref.: CAB C5/7/5
Your Ref.: LS/S/2/01-02

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8 Jackson Road
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Dear Stephen,

**Electoral Affairs Commission (Electoral Procedure)
(Election Committee) Regulation (L.N. 210)**

Thank you for your letter dated 30 October 2001. After consulting our colleagues in the Department of Justice and the Registration and Electoral Office, we set out in the following paragraphs our replies to your questions.

Section 22(2) & (3)

Q1: Section 22(1) mentions the death referred to in section 20(1) or the disqualification referred to in section 21(1). In other words, it means the death takes place after the Returning Officer has made a decision that a person is validly nominated as a candidate at the subsector election but before the polling date. By the same token, the disqualification also takes place after the Returning Officer has made a decision that a person is validly nominated as a candidate at the subsector election but before the polling date.

Section 22(2) however makes express references to a notice under section 20(3)(a) or 21(3)(a) which means the death or disqualification takes place after a notice has been published under section 22(2) of the Schedule to the Chief Executive Election Ordinance (Cap. 569). And the “separate notice” appears to refer to the notice to be published where the death or disqualification takes place after the Returning Officer has made a decision that a person is validly nominated as a candidate at the subsector election but before the publication of the notice under section 22(2) of the Schedule to the Chief Executive Election Ordinance.

If the above analysis is correct, we suggest that section 22(1) be reformulated to refer to death or disqualification of a validly nominated candidate before date of subsector election rather than section 20(1) or 21(1). Further, we suggest that the “separate notice” mentioned in section 22(2) be qualified by a reference to section 20(1) or 21(1).

A1: The declarations made under section 20(3) or 21(3) can be in the form of a Gazette notice, a notice published in a newspaper, or an announcement made by radio or television. In the latter two cases, as the relevant declarations will not appear in the Gazette, we therefore consider it appropriate to publish in the Gazette a separate notice to inform the public of the relevant circumstance. In other words, the “separate notice” applies when the declarations are not made by a Gazette notice under section 20(3)(a) or 21(3)(a).

Section 42(5)

Q2: We are still of the view that the reference “to reach that Officer” is unnecessary in the light of section 42(7). Otherwise, the reference “to reach that Officer” should also be added after “the Presiding Officer”.

A2: We have set out in our letter dated 29 October 2001 the reason for including the reference to “to reach that Officer” in section 42(5). It is, however, not necessary to add the same phrase after “the Presiding Officer”. Section 42(6) provides that the notices of appointment must be delivered to the Presiding Officer by the

candidate, or the election agent, *in person*. Therefore, the notice reaches the Presiding Officer as soon as it is given by the candidate or his election agent.

Section 42(9)

Q3: For clarity purpose, we are still of the view that “in accordance with (11)” is to be added after “the Presiding Officer”.

Q3: The requirement as regards the filing of notice of revocation by a candidate has been clearly set out in subsections (9) and (11). We remain of the view that the two subsections, as presently drafted, will not give rise to ambiguity as to how notices of revocation should be filed.

Section 46(2)

Q4: We are still of the view that “or its vicinity” is to be added after “at a polling station”. In this respect, you may note that there is the reference “or the vicinity of the polling station” after “the person to leave the polling station” in the same subsection.

A4: As explained in our letter of 29 October 2001, it is not necessary to add “or its vicinity” after “at polling station” as the relevant situation has been covered by section 41. On the other hand, the same expression that appears in the end of this subsection is required for empowering the Presiding Officer to remove the person not only from the polling station and, if required, also from its vicinity. This is to ensure that the conduct of the concerned person will not affect the poll.

Section 55(6)

Q5: The Presiding Officer’s discretion to grant permission under section 55(3) refers to a request made under section 55(1) not section 55(6). Section 55(1) is drafted to the effect that it is subject to section 55(6), which appears to mean that there are two distinct circumstances under consideration. Section 55(1) concerns a general situation in which the Presiding Officer may

exercise his discretion to grant or not to grant permission. However, section 55(6) concerns a specific instance in which the voter is incapacitated from voting by physical illness where section 55(3) is not applicable.

A5: While we agree with your above analysis, you would appreciate that section 55(6) is the exception to the general rule in section 55(1). If the voter concerned has made a request under section 55(1), he can cast the vote later provided that the Presiding Officer grants the permission. For that purpose, section 55(3) applies. If the voter has not made any request, he cannot cast the vote – unless he falls within section 55(6). If the exception applies, section 55(3) does not.

Yours sincerely,

(Ms Doris HO)
for Secretary for Constitutional Affairs

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